

303-866-9399

March 10, 2003

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 1st St., N.E., Suite 1110
Washington, D.C. 20002-4250

Re: Comments on Limited English
Proficiency Guidance

Dear Ms. Condray:

Colorado Legal Services (CLS) submits the following comments on the Legal Services Corporation's Request for Comments on Limited English Proficiency Guidance published in the Federal Register on January 9, 2003. CLS appreciates the efforts of the Corporation with regard to this important and growing issue and to the Request for Comments from recipients of LCS funds and others concerning the appropriate approach to be taken by LSC.

The Request for Comments details a number of possible approaches or options which LSC may choose from to best address the issue of clients and applicants for service with Limited English Proficiency (LEP). The options presented include the issuance of a formal regulation, the issuance of guidance, the adoption or endorsement of the Department of Justice's Guidance, the study, analysis and publication and distribution of "Best Practices" and model program procedures, or to take no action at all. CLS believes that, given the current LSC Grant Assurance, the growing number of clients and applicants for service with Limited English Proficiency, that it is appropriate and timely for LSC to take reasonable but modest action in this regard.

Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating on the basis of national origin. LSC is not a Federal agency and is neither subject to Title VI nor Executive Order 13166, implementing Title VI, with respect to LEP, and it is inappropriate for LSC to imply in any way that it is subject to Title VI or the Executive Order. Taking such a position might, in fact, have serious unintended consequences including prohibiting the use of LSC funds as federal match for other federal grants made to recipients of LSC funds. Thus, while LSC should take action, it is not legally obligated to do so.

By Grant Assurance and responsible program performance, LSC recipients, nonetheless, have an obligation to serve persons without discrimination based on national origin including serving those with limited proficiency in the English language.

While LSC suggested in the Request for Comment that it could issue a formal regulation, similar to 45 C.F.R. Part 1624 that was issued in 1979 by LSC to implement the requirement of Section 504 of the Rehabilitation Act of 1973, LSC was not obligated to do so at that time and should not do so now. A formal regulation would impose additional and new regulatory burdens on recipients and would impose the obligation on LSC to monitor and enforce compliance with the regulation when neither programs have the expertise to effectively implement such a requirement, nor does LSC have staff with the expertise to appropriately enforce such a regulation. Thus, while the issue should be addressed by programs, a regulation is likely to be overly formal, premature and is an inappropriate manner in which to proceed. In fact, I have come to believe and experience has taught that no one in the field advocates for or supports a new regulation or reporting requirements except in an area of particular interest or importance to themselves.

LSC specifies in the Request for Comment that it could either reference and adopt the recent Department of Justice Guidance or issue its own guidance. Many recipients, CLS included, receive funding from the Department of Justice, and thus are not only bound by but have considered the Department of Justice Guidance. Much of it is directed to law enforcement activities and agencies and is not directly relevant or related to the work of an LSC recipient. The Department of Justice Guidance is quite lengthy and is overly detailed. Thus, while the Department of Justice Guidance is helpful, a simple reference or adoption of it is not likely to assist many LSC recipients in thinking through and adopting policies and procedures necessary to enhance service to persons of limited English proficiency. Were LSC to adopt its own guidance, it should utilize the Department of Justice work as a helpful starting place, but should use examples and suggestions from legal services programs that are actually and effectively meeting this increasing need.

The most important and helpful initiative that LSC could undertake is to thoroughly assess current practices, accumulate the best practices and make them available widely to recipients of LSC funds and to ask for continuing feedback on what seems to be effective and what is not. All too often, we are inclined to impose requirements with inadequate attention to assessment and feedback. This is an opportunity to collect, assess and distribute best practices in an area in which providers of legal services are just beginning to learn how to most effectively meet the need. Based on these best practices, LSC can then help to provide training, technical assistance and provide roadmaps on how to effectively comply with the current Grant Assurance and help move programs toward improved performance in this important regard.

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Therefore, it is respectfully submitted that the Corporation should not adopt a formal regulation but neither should the Corporation simply adopt and endorse the Department of Justice Guidance in total nor do nothing at all. LSC should either provide best practices and work with programs to assess what seems to meet client and potential client needs, or adopt its own guidance using examples of the experience of recipients of LSC funding or other providers. There is a legitimate question whether providers yet have the experience and skills necessary to even make such recommendations. The preferred course is to aggressively solicit current policies and practices from programs and other providers, to tailor those to the unique needs of LSC programs, to disseminate them broadly and then solicit frank and honest feedback on what works and to continue to develop and disseminate the best practices in this emerging field. It is suggested that LSC should not do too much or nothing at all in this important area.

If you have any questions concerning these comments, or if CLS or I may be of any further assistance in your important deliberations, please let me know at your convenience.

Respectfully,

Jonathan D. Asher
Executive Director

JDA/ccg